

August 27, 2001

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Ex Parte Notification – WT Docket No. 00-258

Dear Ms. Salas:

This letter is being filed to notify you that on August 23, 2001, Steve Sharkey of Motorola, Inc., and Cecily Cohen of Nokia, Inc. met with Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy and discussed issues related to the above captioned proceeding.

During the meeting, we discussed the need for additional spectrum for commercial mobile services, particularly third generation (3G) services, and the importance of the Commission making this spectrum available in a way that provides certainty that carriers will be able to use the spectrum to deploy mobile services.

The FCC is engaged in an interagency process that includes NTIA, the Department of Defense and a number of other government agencies. This process was initiated as a way to identify spectrum for 3G services and develop a plan for making that spectrum available in a timely way. This interagency process, including discussion with industry, is necessary given the complexity of the issues under consideration and the diversity of interests involved.

The FCC's Further NPRM provides a good basis for moving forward by developing a variety of options that benefit all users and provide a sound spectrum management solution. For this effort to be successful, evaluation of the larger picture must be permitted to continue. Premature decisions or actions regarding any particular piece of spectrum under consideration will have a negative impact on the rest of the process and the ability to fully evaluate all available options. However, to the extent that options clearly are not viable, it is reasonable to eliminate them in order to narrow the focus on those options that do appear feasible.

Providing flexibility in the deployment of technology and services is a useful guiding principle to facilitate the evolution of services and efficient use of spectrum where local excess demand and limited capacity exist. It is important, however, to recognize the limitations of this approach in the deployment of new services. Merely providing flexibility to deploy mobile services in a heavily encumbered frequency band is not sufficient to satisfy the spectrum requirements for these services. Due to the very large investment necessary to develop and deploy infrastructure and end-user equipment for a new service like 3G, development will be hampered in an uncertain regulatory environment or in bands that are not used for the same service elsewhere. Aggregation of the licenses or agreements necessary to provide a nationwide rollout of services will be

difficult, or even prohibitive, when such aggregation involves numerous licenses and a significant change in the technical operating conditions necessary to protect non-participating licensees.

These are precisely the conditions that exist in the 2500-2690 MHz band where there is a large number of ITFS and MMDS licensees, where the actual channels licensed to either ITFS or MMDS are interleaved and interspersed both by frequency and geography, where the current technical rules are not suitable for mobile services, and where spectrum is not paired in a way that accommodates frequency division duplex (FDD) mobile services. The Commission itself has recognized the difficult technical and regulatory situation that exists in this band.<sup>1</sup> and the record developed thus far has borne out these facts.<sup>2</sup>

Accordingly, to the extent that the interagency process for identifying 3G spectrum is progressed with the elimination of certain options no longer considered viable, such action is appropriate. However, the Commission should not take any action that is not supported by the record of this proceeding. Nor should the Commission substitute a general desire for regulations that permit flexible use of spectrum for a meaningful analysis of the actual ability to do so. We urge the Commission to concentrate on the real decisions that are necessary to make spectrum available for 3G services in a meaningful way that provides the certainty necessary to facilitate deployment of this service.

Please contact Steve Sharkey at (202) 371-6953 regarding any questions concerning this matter.

Sincerely,

/s/  
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/s/  
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Suite 400  
Washington, DC 20005

Cc: Bryan Tramont

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<sup>1</sup> Federal Communications Commission, *Final Report Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems*, March 30, 2001, p.ii

<sup>2</sup> WorldCom, Inc., *Comments in WorldCom, Inc.*, April 16, 2001, p.2-4. Also see Sprint Corporation, *Comments of Spring Corporation*, April 16, 2001, pp.3-4. Also see *The Reply Comments of the Catholic Television Network*, Catholic Television Network, March 9, 2001, p.5.